THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

W.P. NOs :25805, 26510, 26511, 26512, 26513, 26714, 26715, 27375, 27388, 27389, 27400, 27493, 27404 of 2003

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33, 34, 35, 37, 103, 105, 106, 107, 108, 109, 110, 114, 116, 117, 118, 119, 441, 437, 440, 620, 621, 622, 795, 796, 797, 2314, 2315, 2324, 2325, 2327, 2328, 2330, 2331, 2334, 2335, 2349, 2350, 2353, 3791, 5732, 7025, 7262, 7264, 7274, 7307, 7308, 7310, 7312, 7485, 7490, 7526, 7532, 7833, 8089, 8094, 8096, 8192, 8200, 8297, 8464, 10723, 11201, 12404, 12478, 12599, 12906, 12944, 12952, 12954, 12955, 113030, 13226, 13385, 14238, 14298, 14299, 14300, 14313, 14784, 14953, 15812, 17875, 17886, 15897, 21246, 21247, 21248, 21249, 21251, 21252, 21253, 21255

and 21250 of 2004

&

6137 of 2005.

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3rd October, 2005.

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Between:

1. Sr.Divisional Personnel Officer, South Central Railway, Vijayawada and another.

..... PETITIONERS

AND

1. D.Sriramamurthy, s/o D.Suryanarayana, aged 68 years, Retired Office Superintendent, Grade I, O/o of the Senior D.P.O./SCR/Vijayawada, R/o H.No:24-28/3-25, Rajeev Gandhi Street, Suryapeta, Vijayawada.

.....RESPONDENT

This Court made the following:

COMMON ORDER (Per the Honourable Smt.Justice T.Meenakumari)

Aggrieved by the order of the Central Administrative Tribunal passed in R.A. No: 11 of 2003 and batch in O.A.No:14 of 2002 and batch on 29.7.2003, the above batch of writ petitions are filed by the petitioners.

The respondents in each writ petition, are the applicants before the tribunal. The status of the parties will be referred to as arrayed before the tribunal for the sake of convenience.

It is the common case of the applicants that at the time of their retirement, all of them were getting 97% of their pay as D.A., but they were paid 20% D.A. treating the same as pay for the purpose of calculation of D.C.R.G. according to the then existing rules. Subsequently, the Government of India issued instructions in O.M. dated 14.7.1995 providing that the D.A. must be merged with pay and has to be treated as D.A. for the purpose of Death Gratuity and Retirement benefits at 97% of the basic pay upto Rs.3,500/- for those who retired on or after 1.4.1995. Since all the applicants are drawing D.A. at 97% of their pay, which was granted with effect from 1.7.1993, their grievance is that they must also be paid the gratuity taking into account 97% of D.A. as is done in case of the other employees who have retired from service on or after 1.4.1995. Therefore, they filed O.A.14 of 2002 and batch seeking the above relief before the tribunal. The tribunal by its order dated 29.11.2002 and by way of a common order, dismissed O.A.14 of 2002 and batch. Having aggrieved by the same, the applicants have preferred R.A.11 of 2003 and

batch. After hearing both the parties and relying on the law laid down by the Apex Court, R.A.11 of 2003 and batch was allowed by the Tribunal Bench on 29.7.2003 with the following directions:

> *"The respondents are directed to extend the benefit of judgment of the Full Bench of the Central Administrative Tribunal, Mumbai reported in SHRI BABU RAO SHANKAR DHURI & OTHERS V. UNION OF INDIA & OTHERS () to calculate the gratuity of the applicants taking into account the 97% of D.A. which they were being paid prior to their superannuation and refix their gratuity taking 97% D.A. as Dearness pay for retirement gratuity and to pay them the difference of gratuity and it is declared that non extension of the benefit of the said judgment to the applicants is arbitrary, illegal, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. The above relief is granted subject to the condition that the applicants shall furnish an undertaking to the effect that in case the law as settled by the Full Bench is upset by the High Court of Bombay, the excess payment if any shall be refunded by them at the rate of 6% interest p.a."*

Having aggrieved by the above order, the present writ petitions are filed by the respondents-petitioners.

Heard the learned counsel and perused the order impugned.

When this matter is taken up for hearing, it is brought to the notice of this Court by the learned counsel appearing on behalf of the respondents-petitioners that this matter is squarely covered by a judgment of the Apex Court reported in STATE OF PUNJAB AND OTHERS V. AMAR NATH GOYAL AND OTHERS (). It is further submitted that the case from the file of the High Court of Bombay was withdrawn and numbered before the Apex Court and the Apex Court after hearing all the parties, has declined to grant the relief while upholding the cut off date as 1.4.1995 and while setting aside the order of the tribunal, Mumbai Bench in O.A.No:542 of 1997, 942 of 1997 and 943 of 1997.

Recording the above submission, W.P.25805 of 2003 and batch are allowed in terms of judgment of the Apex Court (Citation-2 supra). No costs.

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(T.MEENAKUMARI, J)

3rd October, 2005

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(P.LAKSHMANA REDDY,J)

gurc/dvs

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION NO :25805 of 1998 and batch.

(Common Order delivered by the Honourable Smt.Justice T.Meena Kumari)

3rd OCTOBER, 2005.